

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

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DATE: March 16, 2005

SUBJECT: Appellate Procedure: Technical Amendment Regarding Costs in Writ Proceedings (amend Cal. Rules of Court, rule 56) (Action required)

Issue Statement

Rule 56(l) of the California Rules of Court provides that, except in certain proceedings, the prevailing party in writ proceedings is entitled to costs under specified circumstances. Before January 1, 2005, an exception to this provision specifically identified criminal and juvenile proceedings as the proceedings in which the prevailing party is not entitled to costs. As part of the fourth installment of the overall revision of the rules on appeal, this reference to criminal and juvenile proceedings was replaced with a general reference to proceedings in which a party is entitled to appointed counsel. These previous amendments were not intended to effect any substantive change in the rule. However, inadvertently, the elimination of the specific reference to criminal and juvenile proceedings could be interpreted to have made such a substantive change.

Recommendation

Staff recommends that the Judicial Council, effective July 1, 2005, amend rule 56(l) of the California Rules of Court to reinstate the specific reference to criminal and juvenile proceedings as proceedings in which the prevailing party is not entitled to costs.

The text of the proposed amendment is attached at page 3.

Rationale for Recommendation

Reinstating the deleted language would avoid possible misinterpretation of the rule.

Alternative Actions Considered

Because this amendment would clarify the rule, no alternatives were considered.

Comments From Interested Parties

The proposal was not circulated for comment because it is a technical correction that is unlikely to create controversy.

Implementation Requirements and Costs

The clarification of the rule should eliminate uncertainty and thereby reduce costs.

Rule 56 of the California Rules of Court is amended, effective July 1, 2005, to read:

Rule 56. Original proceedings

(a)–(k) * * *

(l) Costs

- (1) Except in a criminal or juvenile proceeding or other proceeding in which a party is entitled to court-appointed counsel, the prevailing party in an original proceeding is entitled to costs if the court resolves the proceeding by written opinion after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.
- (2) In the interests of justice, the court may award or deny costs as it deems proper.
- (3) The opinion or order resolving the proceeding must specify the award or denial of costs.
- (4) Rule 27(b)–(d) governs the procedure for recovering costs under this rule.